

State Organic Program

Issues and proposals for establishing a State Organic Program

April 2005

Issues

1. Complaints against non-WSDA certified operations have increased. The time and resources needed to adequately address these complaints is not available. Over the last few months all complaints against non-WSDA certified operations have been referred to USDA NOP compliance. Three complaints have been referred to USDA. One has been resolved, the other three are in progress?
2. In conducting surveillance inspections WSDA encounters organic products that are produced by Washington companies that are handling organic food products and are not certified by WSDA. These companies may be doing private labels or be doing coprocessing for other organic operations. It is often unclear of whether these operations are certified or are out of compliance with organic standards. If WSDA is responsible for protecting consumers and establishing a level playing field for organic producers and handlers within the state that knowledge of who is certified and who is providing that certification is key.
3. WSU CSANR would like to have a complete picture of the size of the state's organic food industry. WSU relies on WSDA to provide information on the acreage and value of the organic food industry in the state. WSDA is unable to provide information on the size of the organic food industry because WSDA only obtains information from the operations that it certifies.
4. California and Utah have established State Organic Programs under the National Organic Program to provide local enforcement of the NOP within their states.

WSDA State Organic Program Proposal

1. Require registration of all certification agencies operating within the state. The states of California, Utah, Minnesota, Missouri, Oklahoma and Georgia currently have this requirement.
2. Require registration of all organic producers and handlers that are certified by non-WSDA organic certification agencies.
3. Require registration of all exempt operations.
4. Require certification of all operations excluded from certification by the National Organic Standards.
5. Obtain adequate revenue from registration fees to cover the costs of investigating complaints, enforcing the NOP within the state, and administering compliance actions.

The National Organic Standards have three sections that specify provisions of a State Organic Program:

State Organic Programs

§ 205.620 Requirements of State organic programs.

- (a) A State may establish a State organic program for production and handling operations within the State which produce and handle organic agricultural products.
- (b) A State organic program must meet the requirements for organic programs specified in the Act.

(c) A State organic program may contain more restrictive requirements because of environmental conditions or the necessity of specific production or handling practices particular to the State or region of the United States.

(d) A State organic program must assume enforcement obligations in the State for the requirements of this part and any more restrictive requirements approved by the Secretary.

(e) A State organic program and any amendments to such program must be approved by the Secretary prior to being implemented by the State.

§ 205.621 Submission and determination of proposed State organic programs and amendments to approved State organic programs.

(a) A State organic program's governing State official must submit to the Secretary a proposed State organic program and any proposed amendments to such approved program.

(1) Such submission must contain supporting materials that include statutory authorities, program description, documentation of the environmental conditions or specific production and handling practices particular to the State which necessitate more restrictive requirements than the requirements of this part, and other information as may be required by the Secretary.

(2) Submission of a request for amendment of an approved State organic program must contain supporting materials that include an explanation and documentation of the environmental conditions or specific production and handling practices particular to the State or region, which necessitates the proposed amendment. Supporting material also must explain how the proposed amendment furthers and is consistent with the purposes of the Act and the regulations of this part.

(b) Within 6 months of receipt of submission, the Secretary will: Notify the State organic program's governing State official of approval or disapproval of the proposed program or amendment of an approved program and, if disapproved, the reasons for the disapproval.

(c) After receipt of a notice of disapproval, the State organic program's governing State official may submit a revised State organic program or amendment of such a program at any time.

§ 205.622 Review of approved State organic programs.

The Secretary will review a State organic program not less than once during each 5-year period following the date of the initial program approval. The Secretary will notify the State organic program's governing State official of approval or disapproval of the program within 6 months after initiation of the review.

Exempt and Excluded operations

§ 205.100 What has to be certified.

(a) Except for operations exempt or excluded in § 205.101, each production or handling operation or specified portion of a production or handling operation that produces or handles crops, livestock, livestock products, or other agricultural products that are intended to be sold, labeled, or represented as "100 percent organic," "organic," or "made with organic (specified ingredients or food group(s))" must be certified according to the provisions of subpart E of this part and must meet all other applicable requirements of this part.

(b) Any production or handling operation or specified portion of a production or handling operation that has been already certified by a certifying agent on the date that the

certifying agent receives its accreditation under this part shall be deemed to be certified under the Act until the operation's next anniversary date of certification. Such recognition shall only be available to those operations certified by a certifying agent that receives its accreditation within 18 months from the effective date of this final rule.

(c) Any operation that:

(1) Knowingly sells or labels a product as organic, except in accordance with the Act, shall be subject to a civil penalty of not more than \$10,000 per violation.

(2) Makes a false statement under the Act to the Secretary, a governing State official, or an accredited certifying agent shall be subject to the provisions of section 1001 of title 18, United States Code.

§ 205.101 Exemptions and exclusions from certification.

(a) Exemptions.

(1) A production or handling operation that sells agricultural products as "organic" but whose gross agricultural income from organic sales totals \$5,000 or less annually is exempt from certification under subpart E of this part and from submitting an organic system plan for acceptance or approval under § 205.201 but must comply with the applicable organic production and handling requirements of subpart C of this part and the labeling requirements of § 205.310. The products from such operations shall not be used as ingredients identified as organic in processed products produced by another handling operation.

(2) A handling operation that is a retail food establishment or portion of a retail food establishment that handles organically produced agricultural products but does not process them is exempt from the requirements in this part.

(3) A handling operation or portion of a handling operation that only handles agricultural products that contain less than 70 percent organic ingredients by total weight of the finished product (excluding water and salt) is exempt from the requirements in this part, except:

(i) The provisions for prevention of contact of organic products with prohibited substances set forth in § 205.272 with respect to any organically produced ingredients used in an agricultural product;

(ii) The labeling provisions of §§ 205.305 and 205.310; and

(iii) The recordkeeping provisions in paragraph (c) of this section.

(4) A handling operation or portion of a handling operation that only identifies organic ingredients on the information panel is exempt from the requirements in this part, except:

(i) The provisions for prevention of contact of organic products with prohibited substances set forth in § 205.272 with respect to any organically produced ingredients used in an agricultural product;

(ii) The labeling provisions of §§ 205.305 and 205.310; and

(iii) The recordkeeping provisions in paragraph (c) of this section.

(b) Exclusions.

(1) A handling operation or portion of a handling operation is excluded from the requirements of this part, except for the requirements for the prevention of commingling and contact with prohibited substances as set forth in § 205.272 with respect to any organically produced products, if such operation or portion of the operation only sells organic agricultural products labeled as "100 percent organic," "organic," or "made with organic (specified ingredients or food group(s))" that:

(i) Are packaged or otherwise enclosed in a container prior to being received or acquired by the operation; and

(ii) Remain in the same package or container and are not otherwise processed while in the control of the handling operation.

(2) A handling operation that is a retail food establishment or portion of a retail food establishment that processes, on the premises of the retail food establishment, raw and ready-to-eat food from agricultural products that were previously labeled as "100 percent organic," "organic," or "made with organic (specified ingredients or food group(s))" is excluded from the requirements in this part, except:

(i) The requirements for the prevention of contact with prohibited substances as set forth in § 205.272; and

(ii) The labeling provisions of § 205.310.

(c) Records to be maintained by exempt operations.

(1) Any handling operation exempt from certification pursuant to paragraph (a)(3) or (a)(4) of this section must maintain records sufficient to:

(i) Prove that ingredients identified as organic were organically produced and handled; and

(ii) Verify quantities produced from such ingredients.

(2) Records must be maintained for no less than 3 years beyond their creation and the operations must allow representatives of the Secretary and the applicable State organic programs' governing State official access to these records for inspection and copying during normal business hours to determine compliance with the applicable regulations set forth in this part.

Proposed changes to the states organic statute:

**CHAPTER 15.86 RCW
ORGANIC FOOD PRODUCTS**

RCW 15.86.010

Purpose.

The purpose section provides authority to provide organic standards, provide certification, provide access to international markets and to establish a state organic program.

May need to more explicitly state purpose to protect Washington consumers and organic producers from mislabeling or unfair competition.

RCW 15.86.020

Definitions.

Definition of Organic certifying agent may need to change to be in line with the National Organic Standards.

RCW 15.86.030

Marketing of organic products--Restrictions.

Looks okay

RCW 15.86.060

Rules, generally--List of approved substances--Violations--Penalties.

Subsection (2) contains enforcement penalties of \$1,000 per violation. This is not in accordance with the NOS, \$10,000 per violation.

RCW 15.86.065

Appears to be fine.

RCW 15.86.070

Certification program--Disposition of fees.

Appears to be fine.

RCW 15.86.090

Mandatory certification--Exceptions.

This section is not in alignment with the exemptions and exclusions in the National Organic Standards. The NOP has stated that they would allow WSDA to require excluded operations to be certified but would not allow exempt operations to be required to be certified.

New section

State Organic Program

(1) The director may adopt rules establishing a program for registering organic certification agencies operating within the state of Washington. The cost per organic certification agency shall be \$1,000 per year. Organic certification agencies shall provide on an annual basis a list of the applicants for certification and the certified operations including any facilities inspected or certified under umbrella certification to the department. The certification agencies shall provide copies of all notices of noncompliance and other enforcement actions taken by the certifier to the State Organic Program.

(2) The director may adopt rules establishing a program for registering organic producers, processors, and handlers that are not certified organic by the department. The rules may govern, but are not limited to governing: The number and scheduling of on-site visits, both announced and unannounced, by department personnel; recordkeeping requirements; and the submission of product samples for chemical analysis. The rules shall include a fee schedule that will provide for the recovery of the full cost of the organic registration program. Fees collected under this section shall be deposited in an account within the agricultural local fund and the revenue from such fees shall be used solely for carrying out the provisions of this section, and no appropriation is required for disbursement from the fund. The director may employ such personnel as are necessary to carry out the provisions of this section.